

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-2313-2022 (O&M)
Date of Decision: 04.02.2025

BALVIR SINGH

. . . .APPELLANT

Vs.

SURINDER SINGH AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Malkeet Singh, Advocate,
for the appellant.

DEEPAK GUPTA, J.

Plaintiff of the suit has approached this Court by way of present Regular Second Appeal against the judgment and decree dated 06.01.2022 passed by the First Appellate Court of Ld. District Judge, Shaheed Bhagat Singh Nagar Nagar, affirming the judgment and decree dated 18.10.2019 passed by the trial Court, whereby suit filed by the plaintiff-appellant seeking decree of declaration with consequential relief of permanent injunction regarding property in dispute, was dismissed.

2. Ld. counsel for the appellant has been heard at length and paper book has been perused.

3.1 It is revealed that Chanan Singh was owner of 39 kanal 5 marla of land as detailed in the plaint. He had four sons namely Balvir Singh (*plaintiff-appellant herein*), Surinder Singh & Amarjit Singh (*defendants-respondents herein*) and one Nirmal Singh. Said Chanann Singh had expired in 2012. However, prior to his death, he had executed a Will dated 16.02.2009 and transfer deed dated 22.02.2012 in favour of his two sons i.e. defendants Amarjit Singh and Surinder Singh. The said Will and transfer deed were assailed by the Plaintiff-Balvir Singh along with his brother Nirmal Singh by filing Civil Suit No.46 of 2012 filed on 31.03.2012 by claiming the property in the hands of

Chanan Singh to be joint Hindu coparcenary property. The suit was dismissed by the Id. Additional Civil Judge (Sr. Division), SBS Nagar on 28.02.2017 by holding that property was not proved to be ancestral. Transfer deed as well as Will were upheld. Appeal filed against the said judgment dated 28.02.2017 was dismissed by the First Appellate Court on 03.07.2019.

3.2 The present suit was filed in April, 2017 by the plaintiff, contending that during the pendency of the earlier litigation, defendants had entered into an agreement/compromise dated 04.07.2014, whereby they had given land measuring 13 kanal 3 marla i.e. 1/3 share of the total land to the plaintiff and had also agreed to get necessary mutation sanctioned in this regard, but later on they refused to do so. Decree for declaration was accordingly sought that plaintiff is joint owner in possession of the land measuring 13 kanal 3 marla out of the total land on the basis of agreement/compromise dated 04.07.2014. In alternative relief of specific performance was sought to direct the defendants to execute the transfer deed in terms of compromise dated 04.07.2014.

3.3 Defendants-respondents contested the suit denying the alleged agreement/compromise dated 04.07.2014. They further raised preliminary objections that suit was barred by principle of *res judicata* besides under the provisions of Order 2 Rule 2 CPC.

3.4 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit on 18.10.2019 and the Appellate Court upheld the said findings on 06.01.2022 as noticed earlier.

4. Assailing the aforesaid concurrent findings, it is contended by Id. counsel that Courts below have failed to appreciate the evidence on record in right perspective. However, after hearing Id. counsel for the appellant, this Court does not find any merit in the present appeal.

5. As has been rightly observed by the Courts below that earlier suit No.46 of 2012 had been filed on 31.03.2012 and the same was dismissed on 28.02.2017. Plaintiff claims that defendants had entered into the agreement/compromise on 04.07.2014 to give 1/3rd share in the total property

to him (plaintiff). It is despite the fact that Chanan Singh, father of the parties, had already transferred the entire property in favour of the defendants by virtue of transfer deed dated 22.02.2012 and had also executed a Will dated 16.02.2009, both of which were upheld by the Court in Civil Suit No.46 of 2012.

6. Learned Appellate Court also observed that plaintiff had admitted during cross-examination that he was not on talking terms with his brother i.e. present defendants-respondents, who had hotly contested the previous litigation and in these circumstances, it is highly improbably that the alleged compromise/agreement could have been executed between the parties.

7. Apart from above, in case the alleged compromise/agreement had been executed on 04.07.2014, as has been claimed by the plaintiff, the same came into existence during the pendency of the earlier litigation. However, it was never pleaded or produced during the pendency of the earlier litigation and this fact further makes the present suit to be barred by the principle of constructive *res judicata* and also Order II Rule 2 CPC, as plaintiff never got the plaint of the earlier suit amended so as to plead the alleged compromise/agreement dated 04.07.2014.

8. On account of the entire discussion as above, this Court does not find any ground to interfere in the well-reasoned concurrent findings of facts recorded by courts below, which are based upon proper appreciation of evidence. There is no illegality or perversity in the impugned judgments. As such, finding no merit in the present appeal, the same is hereby dismissed.

04.02.2025

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No